

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

| | |
|-----------------------------|--------------------|
| SECURITIES AND EXCHANGE | * |
| COMMISSION, | * |
| Plaintiff, | * |
| | * |
| Against | * Civil Action No: |
| | * 5:1-cv-785-XR |
| ROBERT J. MUELLER, | * |
| DEEPROOT FUNDS LLC (A/K/A | * |
| DPRT FUNDS, LLC), AND | * |
| POLICY SERVICES, INC., | * |
| Defendants, | * |
| | * |
| And | * |
| | * |
| DEEPROOT TECH LLC, DEEPROOT | * |
| PINBALL LLC, DEEPROOT | * |
| STUDIOS LLC, DEEPROOT | * |
| SPORTS & ENTERTAINMENT LLC, | * |
| DEEPROOT RE 12621 SILICON | * |
| DR LLC, AND ROBERT J. | * |
| MUELLER, JEFFREY L. | * |
| MUELLER, AND BELINDA G. | * |
| BREEN, AS CO-TRUSTEES OF | * |
| THE MB HALE OHANA | * |
| REVOCABLE TRUST, | * |
| Relief Defendants. | * |

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF
SCOTT ALLEN
FEBRUARY 16, 2023

1 I'm showing you what has been marked as
2 Exhibit -- what I'm marking as Exhibit 18, but was
3 previously marked through your interview as Exhibit 7.

4 (Exhibit Number 18 marked.)

5 Q. Do you see this document?

6 A. Yes.

7 Q. What is this document?

8 A. That would be the -- the memo I attached with
9 my resignation outlining a -- a more detailed list of my
10 concerns and suggestions moving forward that I felt
11 would help the -- would help deeproot, and hopefully
12 things would be better moving forward.

13 Q. All right.

14 I'm gonna highlight the first sentence
15 there of the second paragraph. Do you see that?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes, I see it.

19 Q. And the reference is Missed investor payments,
20 correct?

21 A. Yes.

22 Q. It says, While I have no knowledge or reason to
23 believe that you were doing -- anything you were doing
24 is fraudulent or illegal.

25 Did I read that correctly?

1 A. Yes.

2 Q. And did you believe that at the time?

3 A. At the time that I wrote this?

4 Q. Yes.

5 A. Yes. Well, I -- I had doubts that his
6 explanations for the way he was doing things were
7 legitimate, which is why I chose to leave, but I didn't
8 have any knowledge or any -- any concrete basis. That
9 was -- that was my opinion or -- or my personal feeling
10 that I had come to.

11 Q. All right.

12 MR. HULINGS: Move to strike everything
13 after "yes."

14 Q. So you referenced that there are missed 575
15 periodic payments. I've got that highlighted. Do you
16 see that?

17 A. Yes.

18 Q. And how many payments did -- how many months of
19 payments were missed at the time you wrote this, to the
20 extent that you remember?

21 A. From what I can remember, I think it was one
22 month behind.

23 Q. And what's that total amount that you know of,
24 if you know?

25 A. Oh, I -- I -- I don't know. It would have been

1 thousands of dollars.

2 Q. Okay. All right.

3 I'm gonna highlight the next couple
4 sentences down.

5 While it may not be your design or
6 intention, in the functional operation it looks and
7 feels like a Ponzi scheme, and I cannot and will not be
8 part of it.

9 Do you see that?

10 A. Yes.

11 Q. All right.

12 Did -- at any point previous to providing
13 this memorandum, did you express the concern to
14 Mr. Mueller that the 575 Fund was, in functional
15 operation, looking and feeling like a Ponzi scheme?

16 A. Not in any direct, explicit way.

17 Q. Okay.

18 And the next sentence says, I'm not making
19 accusations toward you or anyone else and do not know of
20 anything that would confirm that scenario.

21 Do you see that?

22 A. Yes.

23 Q. Is that -- was that statement accurate at the
24 time you wrote it?

25 A. Yes.

1 Q. Okay.

2 So what is your definition of a Ponzi
3 scheme?

4 MS. WARDEN: Objection, form.

5 MR. HULINGS: All right. We're gonna --
6 we're gonna --

7 A. My personal --

8 MR. HULINGS: Hold on. Hold on. Hold on.
9 Beyond form, what's the basis for your
10 objection so I can clear up the question, if necessary?

11 MS. WARDEN: Vague.

12 MR. HULINGS: All right.

13 Q. What is your understanding of what the term
14 "Ponzi scheme" means?

15 A. A scheme that is reliant upon new investor
16 money to honor promises made to previous investors.

17 Q. Okay. So let's unpack that. Is that the
18 understanding you had at the time?

19 A. At the time, yes.

20 Q. All right.

21 Does -- does it make a difference to your
22 definition of whether a company's a Ponzi scheme as to
23 whether or not the company had assets?

24 MS. WARDEN: Objection, foundation.

25 Q. You can ignore that objection. Go ahead.

1 A. Well, I think -- I think that's why, you know,
2 I mentioned there the way that Robert had communicated
3 hi- -- the -- the way that the company was operating. I
4 -- like, while I never may have gone to him and said,
5 Robert, this looks like a Ponzi scheme, is this a Ponzi
6 scheme. While we may never have had that conversation,
7 it doesn't mean there wasn't a thought somewhere along
8 the way, saying, man, this -- this feels a little funny,
9 why -- why are we doing things this way.

10 Some of those questions were addressed in
11 meetings with potential broker-dealers when we were --
12 when he was discussing the compliance or the -- the --
13 the structure of the fund, whether that's reviewing the
14 PPM or -- or -- or discussing the operations. I had
15 heard him give several explanations to people outside of
16 deeproot, whether those be finders or prospective
17 finders or other -- other institutions we were looking
18 to work with, that more or less addressed that and had
19 an explanation from him that appeared to be aboveboard.

20 And, you know, so his role as the -- as the
21 head of the company and active chief compliance officer,
22 I relied on things that he said in terms of balancing my
23 -- you know, my personal feelings or -- or internal
24 questions. And so he would explain this as the fund is
25 a business like any other business that's reliant on

1 cash flows to operate, and based on how you -- how you
2 do the accounting or whichever accounting method that
3 you use, everything we're doing is aboveboard; it's just
4 a -- a very -- there's a -- there's a, you could say
5 unique way that we have to operate as a business to be
6 able to do what we do. And so that -- that -- that
7 sufficed for a time for me to -- to continue working
8 there, until it -- until I -- I just no longer believed
9 that to be reliable.

10 **Q. All right.**

11 **MR. HULINGS:** So I'm going to move to
12 strike as nonresponsive.

13 **Q. Let's -- let's kind of break this down a little**
14 **bit more. You made -- you know, you put in your -- your**
15 **letter that in functional operation it looks and -- it,**
16 **meaning the 575 Fund, looks and feels like a Ponzi**
17 **scheme, correct?**

18 A. Yes.

19 **Q. All right.**

20 **So give me the complete factual basis for**
21 **that statement at the time.**

22 A. He was not able to make the 575 periodic
23 payments. There had not been enough investment capital
24 come in to account for those missed payments.

25 **Q. Okay.**

1 **So --**

2 A. Or -- or there was not enough incoming
3 investment capital that would have met the level that
4 needed to go out to those payments.

5 **Q. All right.**

6 **And is that the complete factual basis for**
7 **your statement at the time?**

8 A. That -- that was from -- that was from my
9 understanding. I didn't know what other sources of
10 income were coming in from other -- from the other
11 affiliates, and so it -- it looked to me as if the only
12 way payments were being made were based on funding of
13 new investment dollars.

14 **Q. Okay. So have you ever heard the phrase "money**
15 **is fungible"?**

16 A. Maybe not that specific phrase, but that sounds
17 like something I've heard.

18 **Q. All right.**

19 **Do you agree with that statement?**

20 A. Sure.

21 **Q. Okay.**

22 **So if the source of payments to investors**
23 **has -- or if -- let me rephrase.**

24 **If the source of payments to investors is**
25 **funded by more than new investments, does that make the**

1 entity not a Ponzi scheme?

2 MS. WARDEN: Objection, vague.

3 A. I'm not sure I'm -- I'm the expert on Ponzi
4 schemes to be able to answer that from a legal basis.

5 Q. Well, you made the accusation that the -- the
6 company was a Ponzi scheme, and you just gave a
7 explanation of what a Ponzi scheme is, so I'm asking
8 you, based on your understanding of the phrase "Ponzi
9 scheme," if the source of the funds of payments to old
10 investors is funded by more than just new investments,
11 does that still meet the definition of a Ponzi scheme,
12 based on your understanding?

13 A. I -- I -- I would say -- I would say that would
14 not meet the definition of a -- of a Ponzi scheme.

15 Q. Right. Okay.

16 So -- and you just said that you didn't
17 know what other sources of funds were coming into the
18 deeproot entities at the time other than investor funds,
19 correct? Let me rephrase that. That was -- that was
20 messy.

21 You were aware of how much investor funds
22 were coming in at the time, correct?

23 A. Correct.

24 Q. And would you be aware of a policy that
25 matured?

1 A. Yes.

2 Q. Would you -- would you be aware of any revenues
3 or cash flow from any of the deeproot affiliates?

4 A. Not necessarily.

5 Q. And would you be aware if, say, Mr. Mueller
6 took out a loan?

7 A. Not unless he told me.

8 Q. Did you have access to the bank accounts?

9 A. I did not.

10 Q. So you mentioned that whether or not there is a
11 separate set of funding other -- other than new investor
12 funds is important to determining whether or not
13 something is a Ponzi scheme, right?

14 A. I would say so.

15 Q. And you actually didn't know at the time
16 whether or not there was another source of funds for the
17 575 Fund?

18 A. Correct.

19 Q. Okay.

20 So if -- if a business has more expenses
21 than it has revenues, does that make it a Ponzi scheme?

22 MS. WARDEN: Objection, form.

23 A. No.

24 Q. So that just means the business is losing
25 money, right?

1 A. Yes.

2 Q. And lots of businesses have expenses that
3 exceed revenues, correct?

4 A. Yes.

5 Q. Tesla, for a long time, is a company that had
6 expenses that exceeded revenues, correct?

7 A. Sure, to my understanding, yes.

8 Q. Is it your understanding that is a -- as
9 someone who invests in companies for a living, that it's
10 common for start-up companies to have expenses that
11 exceed revenues?

12 A. Yes.

13 Q. All right.

14 And just because expenses exceed revenues
15 doesn't make that company a Ponzi scheme?

16 A. Correct.

17 Q. So we talked earlier about the deeproot
18 expenses. Do you remember that?

19 A. Yes.

20 Q. And -- and I believe that you may remember that
21 the investors were told that 20 percent of the money
22 they invest could be used for deeproot expenses. Is --
23 is that about right?

24 A. That's about right.

25 Q. And -- and we talked about expenses being

1 obligations -- a -- an obligation of the deeproot
2 entities to make a payment, correct?

3 A. Correct.

4 Q. And obligations driven -- or, you know, an
5 obligation under a contract to make a payment, correct?

6 A. In some cases, yes.

7 Q. So if -- if the deeproot entities have a
8 contract that requires them to make a monthly payment
9 to, say, a landlord, that would be an expense, correct?

10 A. Yes.

11 Q. And if the deeproot entities had a contractual
12 obligation to make a monthly payment under a
13 subscription agreement, that could also be an expense?

14 A. Sure.

15 Q. So the fact that one of those expenses goes to
16 a former investor, is that what makes this a Ponzi
17 scheme, under your definition?

18 A. If the only source of -- if the only source of
19 money to pay -- to pay previous investor commitments is
20 new investors, it would.

21 Q. Well, let me ask you this. Do you recall the
22 PPMs making reference to reserve funds?

23 A. Yes.

24 Q. Do you recall recommending to Mr. Mueller that
25 deeproot increase the amount of its reserve funds?

1 A. Yes.

2 Q. What was supposed to be the source of funding
3 for those reserve funds under your recommendation to
4 Mr. Mueller?

5 A. I -- that was his responsibility to figure that
6 out, but I would -- I would imagine initially it would
7 be from the investment coming in, apart from those being
8 allocated as a -- an -- the assets to -- part of that
9 could be a reserve asset.

10 Q. All right.

11 So if the reserve fund is funded by
12 investor contributions and then makes payments to -- let
13 me -- let me back up.

14 So the -- what was the reserve fund
15 supposed to be used for?

16 A. Expenses.

17 Q. Okay.

18 Could the reserve fund, under your
19 recommendation, be used to pay the required monthly
20 expenses to 575 investors?

21 A. I guess -- I guess so if -- if that -- if -- if
22 Robert felt, as the one ultimately responsible for that,
23 that that was within compliance. That's his decision to
24 make.

25 Q. But you're making a recommendation to him that

1 -- that the company increase its reserve funds, correct?

2 A. Yes.

3 Q. And on your recommendation, was -- was -- were
4 you recommending that they increase the reserve funds to
5 make sure that payments to investors would be made?

6 MS. WARDEN: Objection.

7 A. It -- it would be made -- it would be to make
8 sure that expenses did not get missed again, as he had
9 missed many expenses.

10 Q. All right.

11 Including the required payments to
12 investors in the 575 Fund?

13 A. I'm not sure when we made that recommendation
14 there had been missed payments to 575 investors.

15 Q. Okay.

16 But at the time you made the
17 recommendation, it was conceivable that the reserve
18 funds would be used to make monthly payments to 575
19 investors?

20 A. It -- that would not have been the -- the
21 intention for our recommendation for the reserve fund.

22 Q. Would it have been a possibility under the
23 reserve fund?

24 MS. WARDEN: Objection, speculative.

25 Q. Under your recommendation?

1 A. Yeah, I mean, that --

2 Q. A possibility?

3 A. -- that is speculative. At -- at the end of
4 the day, we were -- we were relying on Robert, as the
5 chief compliance officer of the funds, to make sure he
6 followed things within what he said he was doing, the
7 appropriate -- the appropriate bounds by which the funds
8 were offered.

9 MR. HULINGS: Move to strike as
10 nonresponsive.

11 Q. Let's -- in the -- in all of your
12 communications with investors, did you ever explain --
13 did anybody ever ask -- let me rephrase.

14 In all of your communications with
15 investors, did anyone ask about the reserve funds?

16 A. Not that I can recall.

17 Q. All right.

18 Did you ever tell anybody, any -- did you
19 ever tell any investors or finders what the source of
20 the funds or the reserve funds would be?

21 A. Not that I can recall.

22 Q. Did you ever tell investors that the re- -- the
23 reserve funds would never be funded by investor
24 contributions?

25 A. Not -- not that I can remember.

1 Q. All right.

2 In all -- in your communications with
3 investors, you explained that the life insurance
4 policies are not liquid, correct?

5 A. Correct.

6 Q. You also explained that you didn't know when
7 any of those life in pol- -- life insurance policies may
8 result in the payments to the deeproot companies,
9 correct?

10 A. Correct.

11 Q. So at the beginning of this fund, what other
12 possible source for payments under the 575 Fund could
13 there be other than --

14 MS. WARDEN: Objection.

15 Q. -- investor funds?

16 MS. WARDEN: Sorry.

17 Q. To your knowledge.

18 A. Some of the other affiliates.

19 Q. Okay.

20 Do you remember -- did you talk to Mr. --
21 or actually let me -- let me rephrase.

22 When did you first develop the concern that
23 the 575 Fund was run like a Ponzi scheme?

24 A. It -- it would have been there during the
25 summer of 2020.

1 **Q. All right.**

2 A. It would have been where I -- where I no longer
3 accepted Robert's explanation for how it was aboveboard.

4 **MR. HULINGS:** Move to strike everything
5 after "2020."

6 **Q. So after you developed this opinion, you**
7 **continued to speak to investors about investing in the**
8 **575 Fund, correct?**

9 A. Sure, yes. I continued to work there, doing my
10 job.

11 **Q. All right.**

12 And part of your job was speaking to
13 prospective investors about an investment in the 575
14 Fund?

15 A. Correct.

16 **Q. And did you tell any investor that you thought**
17 **the 575 Fund was run like a Ponzi scheme?**

18 A. No, my job was to relay the information as
19 outlined in the PPM and within Robert's direction.

20 **Q. All right.**

21 And do you think any of your communications
22 with investors in the summer of 2020 through the fall of
23 2020 were false or misleading?

24 A. I did not intentionally provide any false or
25 misleading statements to investors.

1 Q. So even though you thought or you suspected
2 that the company was run like a Ponzi scheme, you still
3 made the same presentation to investors and did not at
4 the time think that it was false or misleading. Do I
5 have that right?

6 A. That's fair.

7 Q. And when you spoke to -- when you had that
8 conversation on October 6th and that e-mail referred to
9 before the break -- do you remember that?

10 A. Yes.

11 Q. Did you tell that investor that you thought the
12 deeproot entities were run like a Ponzi scheme?

13 A. I did not.

14 Q. In fact, you told him that he had been warned
15 that he could lose money on the -- on the investment,
16 right?

17 A. Correct.

18 Q. Did you ever talk to Nate Spradlin about your
19 concerns that the deeproot entities were run like a
20 Ponzi scheme?

21 A. Not explicitly.

22 Q. Okay.

23 Did you talk to Mr. Spradlin after you left
24 -- let me -- let me rephrase.

25 Did you talk to Mr. Spradlin about the memo

1 that you gave Mr. Mueller?

2 A. I may have. I don't remember for sure, but I
3 may have discussed it.

4 Q. All right.

5 Do you remember discussing your suggestion
6 that the 575 Fund was a Ponzi scheme during those
7 conversations with Mr. Spradlin?

8 A. I may have told him that I -- that I -- that I
9 raised that concern to Robert in the memo.

10 Q. And what did Mr. Spradlin say?

11 A. I don't remember.

12 Q. All right.

13 Are you aware that Mr. Spradlin also was
14 interviewed by the SEC?

15 A. I am.

16 Q. All right.

17 Are you aware that he told them he did not
18 think the 575 Fund was run like a Ponzi scheme?

19 A. I'm not aware.

20 Q. All right. Let me -- let me -- let me read you
21 part of what I will represent was Mr. Spradlin's
22 statement.

23 My understanding of a Ponzi scheme is where
24 there's no assets being purchased and solely money
25 coming in and going out. But that's -- again, the

1 A. I do.

2 **Q. And what is it?**

3 A. This is the memo that accompanied my
4 resignation letter.

5 **Q. Okay.**

6 And did I show you -- the exhibit that I
7 just showed you that's Exhibit 18, was that your
8 resignation letter?

9 A. The document previous to this one, yes.

10 **Q. Okay.**

11 And did -- did the two of those -- did
12 those documents go together?

13 A. Yes.

14 **Q. Okay.**

15 Tell me, just in your own words, why did
16 you decide to write the resignation letter, which is
17 Exhibit 18, and then the attached memo, which is
18 Exhibit 22?

19 A. I wanted a -- a -- an official resignation
20 letter with me leaving, and as I explained a little bit
21 earlier today, I knew what me leaving would do to the
22 potential fundraising efforts, and the reality of -- of
23 what my leaving would mean for the company, and I -- I
24 didn't want to leave him empty-handed.

25 I wanted to provide some suggestions and --

1 and make sure that any of my concerns that had not been
2 explicitly stated before, that Robert had a chance to --
3 to at least hear them and see them and know that there
4 were -- that they -- that they did exist, and then
5 provide constructive feedback towards what I thought
6 would help things run better moving forward.

7 **Q. And you mentioned you wanted an official**
8 **resignation letter. Did you believe it was part of your**
9 **job responsibilities to transmit an official resignation**
10 **letter to Mr. Mueller?**

11 A. Yeah, that's the professional thing to do.

12 **Q. And I think you -- you mentioned that you**
13 **transmitted it via Slack, right, to Mr. Mueller and Ms.**
14 **Lee?**

15 A. Yes, as well as physical copies under their
16 respective doors.

17 **Q. Okay.**

18 **And did you ever get a response from --**
19 **from Mr. Mueller?**

20 A. I received a response e-mailed from Stephanie
21 on behalf of the company, I think a week later.

22 **Q. Oh, okay.**

23 **So -- but my question was, did you ever get**
24 **a response from Mr. Mueller?**

25 A. I haven't looked at it since the day I received

1 it would be something that I -- I think he should
2 consider as how he is -- as how he was operating the
3 business.

4 Q. In writing that, in function it looks and feels
5 like a Ponzi scheme, is it fair to say you're basing
6 that off your -- just your opinion of -- of what you
7 observed in your time at deeproot?

8 A. Correct, I can --

9 MR. HULINGS: Objection -- hold on, hold
10 on, hold on. Objection as to vagueness for now.

11 Q. Is the sentence if -- it looks and feels like a
12 Ponzi scheme, is that based on your observation or
13 someone else's?

14 MR. HULINGS: Objection, compound.

15 A. That was mine.

16 Q. Okay.

17 And can you date-stamp for us when you
18 became concerned that in functional operation that
19 deeproot looked and felt like a Ponzi scheme?

20 MR. HULINGS: Objection, vagueness as to
21 the phrase "date-stamp."

22 MS. WARDEN: Sorry.

23 Q. Can you tell me when you first became concerned
24 that deeproot looked and felt like a Ponzi scheme?

25 A. It -- it was more of a building development

1 throughout the last nine to 12 months I was there.
2 Again, hearing him explain how things operated and
3 having a justification of why it was acceptable, I -- I
4 grew to doubt that and no longer want to accept it as --
5 I -- I no longer believed him that he was -- that he
6 actually knew what he was -- that -- that he was
7 actually competent and -- and knowing what he was doing.

8 **Q. Okay.**

9 **And I believe you testified that you don't**
10 **recall directly discussing with Mr. Mueller your concern**
11 **that deeproot felt like a Ponzi scheme, correct?**

12 A. Correct.

13 **Q. Okay.**

14 **But did you share your concern -- concerns**
15 **with Mr. Mueller about deeproot's -- did you share your**
16 **concerns with Mr. Mueller about deeproot?**

17 A. Yeah, I --

18 **MR. HULINGS:** Objection, vague.

19 A. Yeah, I think -- I think I discussed that
20 already fairly extensively today with other documents
21 highlighting things Nate and I had discussed and things
22 that, you know, we had -- we had attempted to discuss
23 with Robert previously.

24 **Q. Okay.**

25 **And let's just unpack this. So you**